IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.903 of 1997
A.S.No.540 of 2001
and
A.S.No.541 of 2001

A.S.903/1997

G.Sankaralingam .. Appellant/
1st Defendant

..vs..

1.Y. Surya Rao ..1st respondent/
plaintiff

2.Dr.K.S.Gopalan (died)

3.Meenakshi Gopalan ..Respondents 2&3/
Defendants 2&3

Tr.A.S.No.540 of 2001

G.Sankaralingam ..Appellant/Defendant

..Vs..

Y.Surya Rao ..Respondent/Plaintiff

Tr.A.S.No.541 of 2001

G.Sankaralingam ..Appellant/1st Defendant

..Vs..

1.Dr.K.S.Gopalan (died)
2.Meenakshi Gopalan ..Respondents 1&2 /
Plaintiffs 1&2

3. Y.Surya Rao .. 3rd Respondent /
2nd Defendant

4. G.Balasubramaniam
5. Bhuvaneswari

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6. Lakshmi ..Respondents 4 to 6

(Respondents 4 to 6 were impleaded as per order made in I.A.No.1090/98 dated 23.9.98 and amended as per order made in I.A.No.1322/98)

Prayer in A.S.No.903 of 1997:-

Appeal is filed against the Judgment and decree dated 28.11.1995 made in O.S.No.230 of 1990 on the file of the Subordinate Judge, Poonamallee.

Prayer in A.S.No.540 of 2001:-

Appeal is filed against the Judgment and decree dated 28.11.1995 made in O.S.No.74 of 1993 on the file of the Subordinate Judge, Poonamallee.

Prayer in A.S.No.541 of 2001:-

Appeal is filed against the Judgment and decree dated 28.11.1995 made in O.S.No.682 of 1992 on the file of the Subordinate Judge, Poonamallee.

In A.S.No.903 of 1997:
For Appellant : Mr. V. Bhiman for Mr. A. Subramania Iyer,
For Respondent-1 : Mr.T.R.Rajaraman
For Respondent-3 : Mr.A.K.Lakshmi Narayanan
Respondent-2 : Died.

JUDGMENT

These appeals are against the common judgment dated 28.11.1995 in O.S.No.230 of 1990, O.S.No.682 of 1992 and O.S.No.74 of 1993 on the file of the Subordinate Court, Poonamallee in and by which the learned Sub Judge after analysing the evidence in depth decreed all the suits as prayed for.

2. Aggrieved by the order, the present appeals have been filed by the first defendant in O.S.No.230 of 1990 and O.S.No.682 of 1992 and defendant in O.S.No.74 of 1993.

3. For convenience, the parties are referred as arrayed in the suit in O.S.No.230 of 90.

4.The first defendant viz., G.Sankaralingam in O.S.230/90 who is also the first defendant and defendant in O.S.682/92 and O.S.74/93 respectively.

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5.The 2nd and 3rd defendant in O.S.230/90 is the plaintiff in O.S.682/92.

6.The plaintiff in O.S.230/90 is the 2nd defendant and plaintiff in O.S.682/92 and O.S.74/93 respectively.

7. The plaint pleadings in O.S.No.230/90 and O.S.74/93 is the written pleadings of the second defendant in O.S.682/92.

8. The defendant G.Sankaralingam filed written statement common to both the suits of O.S.230/90 and O.S.74/93. The common plea of the plaintiff in O.S.No.230/90 and O.S.74/93 and the second defendant in O.S.No.632/92 are as follows:-

8.1. The first defendant is the owner of the suit property. The plaintiff entered into an agreement with the first defendant dated 22.2.89 whereby the first defendant agreed to convey the suit property for a total sale consideration of Rs.3,50,000/- (Rupees Three lakhs fifty thousand only) and on the date of the agreement itself, the first defendant received an advance amount of Rs.1,03,500/- from the plaintiff, the receipt of which sum, the first defendant acknowledged in the said agreement itself. In the said agreement itself, the plaintiff was directed to discharge the mortgage in favour of "the Mambalam Kasi Viswanathar Co-operative Building Society Ltd.". The plaintiff paid a sum of Rs.48,100/- to the said society on 23.2.1989 and discharged the said mortgage and got back the mortgage deed and the original sale deed dated 28.8.1982 executed by A.Sheriff and A.Nazar in favour of the first defendant in respect of the suit property and also other material papers handed over by the first defendant to the said Society. The said society also executed a registered deed of conveyance dated 12.5.1989. Apart from the abovesaid payment of Rs.48,100/- on 23.2.1989 direct to the said Society, on 23.2.89 itself a further sum of Rs.26,400/- was paid to the first defendant and the first defendant acknowledged the receipt of the said sum of Rs.26,400/- by making an endorsement on the back of the said agreement. Thus by 23.2.1989 the total amount paid by the plaintiff to the first defendant is Rs.1,78,000/-. The various other particulars of the payments made by the plaintiff to the first defendant on different dates towards the sale consideration and the first defendant also acknowledged the receipt of the said amounts by making endorsements on the back of the said agreement.

8.2. Thus by 6.6.1989 the entire sale consideration of Rs.3,50,000/- was paid to the first defendant. The 1st defendant after the receipt of the entire sale consideration also placed the plaintiff in possession and enjoyment of the suit property. Now the plaintiff is occupying a portion of the suit property and the remaining portion of the suit property are occupied by the tenants who have already attorned the tenancy in favour of the plaintiff. The tenants are A.Thankaraj, Mrs.M.Vasantha, T.M.Sheriff, K.J.R.Chandran, A.K.Khaja Mohideen, P.S.T.S.Subramani. The aforesaid tenants were originally occupying their respective portions in the suit

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property as tenants under the first defendant and after the plaintiff was placed in possession and enjoyment of the suit property, the said tenants attorned the tenancy in favour of the plaintiff and are paying rent to the plaintiff.

8.3. The plaintiff is always ready and willing to perform his part of the contract. Inspite of several demands made by the plaintiff, the first defendant having received the entire sale consideration and also placed the plaintiff in possession and enjoyment of the suit property, is evading to execute and register sale deed in respect of the suit property in favour of the plaintiff. In fact, the plaintiff purchased stamp papers and prepared the sale deeds and informed the first defendant to come and execute the sale deed and was waiting for the first defendant in the Registrar Office, but the first defendant never turned up to the Registrar Office to execute and register the sale deed in favour of the plaintiff. The plaintiff immediately wrote a letter dated 31.12.1989 to the first defendant requesting the first defendant to execute and register the sale deed in favour of the plaintiff atleast by "THAI MONTH". The first defendant has not sent any reply. The plaintiff has been requesting the first defendant to execute and register the sale deed in his favour, but the defendant is dodging. Finally a letter was sent by the plaintiff to the first defendant on 4.4.1990 asking the first defendant to execute and register the sale deed in favour of the plaintiff, the first defendant has not complied with the demands made in the said letter.

8.4. As the first defendant is not caring for any letter, the plaintiff approached the police to get the sale deed registered in his favour. There the plaintiff learnt that the 2nd defendant and 3rd defendant appear to have entered into an agreement with the first defendant to purchase the suit property and as the first defendant has not executed the sale deed, they also lodged a complaint against the first defendant. The plaintiff is not aware of any agreement between the first defendant on the one hand and the defendants 2 and 3 on the other hand. The plaintiff apprehends that the first defendant must have cooked up some agreement to sell in favour of the defendants 2 and 3. Pending suit the first defendant forcibly dispossessed the plaintiff from the entire suit property on 9.8.93. The first defendant originally dispossessed the plaintiff from the portions 5/4 and 5/6 on 11.9.1991. Subsequently he dispossessed the plaintiff from portions 5/1 and thatched shed in the upstairs on 30.10.1991 and from portion 5/3 on 30.3.1992. The first defendant started collecting rent from the plaintiff's tenant T.M.Sheriff from 11.9.1991 for portion 5/2. The plaintiff was occupying portion 5/5 on 9.8.1993 at 10.00 p.m. The first defendant along with 15 rowdies whose identity the plaintiff is not able to say, come to the plaintiff's portion 5/5 and forcibly thrown out the house hold materials and goods from the said portion belonging to the plaintiff and also damaged the plaintiff's motor-cycle. The first defendant and his wife and their men loaded the plaintiffs materials and goods in two lorries and afterwards the lorry people on the instructions of the first defendant asked the plaintiff where they should take the materials and goods. To save his materials and

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goods the plaintiff instructed the lorry men to leave the materials and goods at No.36, First Main Road, Lakshmi Nagar, Porur temporarily where the plaintiff's department men is living. The first defendant and his wife along with 15 rowdies coerced the plaintiff and threatened the plaintiff to pass on a letter to the effect that as if the plaintiff vacated the premises on his own. They further threatened to kill the plaintiff, his wife and children, if such a letter is not passed on to them immediately. The first defendant and his wife and the rowdies gathered by the first defendant all used filthy language. Fearing danger to his life and his wife's and children life, the plaintiff passed on a letter written by first defendant's wife and signed by the plaintiff to the first defendant. The first defendant has forcibly occupied the portion 5/5. the plaintiff's telephone connection is also disconnected by the first defendant. The first defendant is not a law abiding citizen and he has no respect for the court's order. In this regard, the plaintiff already filed contempt petition in I.A.959/93. Since the first defendant has forcibly dispossessed the plaintiff and has forcibly occupied the entire suit property pending suit, the plaintiff is seeking for recovery of vacant possession of the suit property. Hence the suit.

9. The written statement of the first defendant in O.S.No.230/90 who is also the first defendant and defendant in O.S.682/92 and O.A.74/93 respectively states as follows:-

9.1. The defendant who is the owner of the properties agreed to sell the properties for a total sale consideration of Rs.3,50,000/-. What this defendants agreed to convey was only one of the 6 items of properties viz., No.5, Thiruveedhi Amman Koil Street, Porur, Madras-116 for a consideration of Rs.3,50,000/- but strangely enough the plaintiff is now claiming all the 6 items of properties viz., 1 to 6, Thiruveethi Amman Koil Street, Porur.

9.2. The sum of Rs.1,03,500/- mentioned as advance under the sale agreement dated 22.2.1989 consists of Principal of Rs.38,000/- and the balance of Rs.65,500/- represents the exorbitant interest collected by the plaintiff at 120% p.a. on the Principal of Rs.38,000/- paid on different dates.

9.3. Out of the advance of Rs.3,50,000/- the sum of Rs.65,000/- has to be deducted as it is an exorbitant rate of interest on the loan of Rs.38,000/-. Thus the defendant admit liability to the extent of Rs.2,85,000/- and interest of Rs.15,000/- on Rs.38,000/- aggregating to Rs.3,00,000/- as mentioned in the reply notice issued by the defendants.

9.4. The plaintiff have no right to retain the rents from the other properties as this defendant is the owner and the tenants have to pay the rents to this defendant but the defendant had authorised the plaintiff to collect rents from the tenants that the defendant could recover the same from the plaintiff. The defendant has not given him any power of attorney or authorisation to collect the rents. For the safer of convenience, the

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defendant wanted the plaintiff to collect the rents and pay the same to this defendant. Now the plaintiff is taking undue advantage of this arrangement. The plaintiff had not get sufficient funds to pay even the agreed amount of Rs.3,50,000/- for the purchase of one item viz., Door No.5, Thiruveedhi Amman Koil Street as per the agreement dated 22.2.89. As the plaintiff failed to give the draft sale deed for sending it to the I.T. Authorities, and as the plaintiff had no funds and as the plaintiff agreed to pay Rs.5,50,000/- for the entire 6 properties 1 to 6. Thiruveedhi Amman Koil Street, this defendant was expecting that the plaintiff will come forward with an agreement for Rs.5,50,000/- but the plaintiff did not come with the agreement since the plaintiff did not get the loan from L.I.C for the purchase of Door No.5, Thiruveethi Amman Koil Street, itself.

9.5. The plaintiff is taking advantage of the fact that the plaintiff's wife Karpagavalli was giving loan to this defendant's wife Gunasundari and so the plaintiff thought that he could grab all items of properties Door No.1 to 6 by giving consideration for one item of property viz., Door No.5, Thiruveedhi Amman Koil Street,Porur.

9.6. The 2nd and 3rd defendants wanted to get possessions and they wanted the plaintiff to be evicted and hence the defendants 2 and 3 filed a Police complaint. When the plaintiff was called by the Police to show his rights, he showed his agreement and this defendant was shocked to see the interlineation and additions of clauses in the said agreement. Only then this defendant made a Police complaint on 25.4.1990 to the Commissioner of Police to punish the plaintiff on the ground of cheating by tampering with the agreement to acquire all the 6 properties. Thereupon the plaintiff agreed to pay the entire consideration of Rs.5,50,000/- but now he has chosen to institute this suit in this Honourable Court.

9.7. The plaintiff is fully aware of this defendant's agreement with Dr.K.S.Gopalan and another and as the time for performance of contract had expired, the plaintiff agreed to purchase one item of property viz., No.5, Thiruveethi Amman Koil Street, Porur. The plaintiff wanted only one item of property viz., No.5, Thiruveedhi Amman Koil Street, as the same is a recent construction having a plinth area of 1400 sq.ft., with mosaic flooring and other amenities. The other two buildings bearing Door No.1 to 4 and No.6 both consist of plinth area of about 1200 sq.feet only. The original title deeds collected from the Co-operative Society is retained by the plaintiff to enable him to draft the sale deed to be forwarded to the I.T.authorities.

9.8. The plaintiff was allowed to occupy the building bearing door No.5 alone out of door numbers 1 to 6 on a monthly rent of Rs.1,000/-. Accordingly, the plaintiff and his family members were residing at Door No.5. An ad-interim injunction order was passed by the Court against the defendant in I.A.No.625/90 in the above suit in respect of Door No.5 alone, in which the plaintiff was residing, and not for Door Nos.1 to 4

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and 6. The possession in respect of Door Nos.1 to 4 and 6 were never handed over to the plaintiff herein by this defendant at any point of time. This defendant requested the plaintiff to collect the rent from the tenants and remit the same to this defendant's wife through his wife since both of them are working in the same A.G's Office at Madras. The plaintiff has failed and neglected to pay his monthly rent as well as the rent collected from the tenants in spite of demands made by this defendant.

9.9. The plaintiff met him on 9.8.1993 at about 9.00 a.m., and informed him that he has decided to vacate the portion under his occupation via., Door No.5(for the reasons best known to him) and hand over vacant possession of the same to this defendant on the same day. After that the plaintiff went away to fix a van through one Rajendran of the same locality. At about 9.30 a.m., he brought two vans as well as some coolies to load the household articles and loaded the same in the said vans with the help his men. The plaintiff disconnected his telephone connection and removed the telephone instrument on the same day. The plaintiff has also passed on a letter duly signed by him to this defendant to that effect on 9.8.1993 itself. The plaintiff did not inform him about his destination. The defendant filed a memo dated 13th August 1993 into Court to that effect in O.S.No.74/93.

9.10. The plaintiff has chosen to harass this defendant as much as he can. This defendant has been put to great loss as a result of the fraudulent activities of the plaintiff, who had forged the agreement and who is attempting to claim 6 properties belong to this defendant and now after voluntarily vacating the house in his occupation, he has come forward with a prayer for delivery of possession by the defendants, when this defendant was only living with his family in No.5, Thiru Veedhi Amman Koil III Street, Porur, Madras-116.

9.11. The plaintiff even after handing over vacant possession of door No.5 to this defendant has chosen to use the same address in the plaint with a malafide intention. Hence this suit is liable to be dismissed.

10. The written statement of the second defendant adopted by the 3rd defendant in O.S.230/90 who are none other than the plaintiffs in O.S.682/92 states as follows:-

10.1. The first defendant had entered into an agreement for sale dated 13.7.88 at Saidapet, Madras with the second and third defendant. Under the terms of the agreement the first defendant had agreed to sell the plaint property for a total sale consideration of Rs.3,25,000/- to this defendant and the third defendant. An advance amount of Rs.35,000/- was also paid by this defendant to the first defendant in terms of the above said agreement. The first defendant had agreed to deliver to the plaintiff's advocate all original title deeds relating to the suit property and also Encumbrance Certificate for a period of 14 years, within a fortnight from the date of the agreement and furnish such other documents which the plaintiff's advocate may require for verification and

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determinating the title of the Schedule property. The first defendant had also agreed to obtain income Tax Clearance Certificate under Section 230-A of the Income Tax Act, 1961, within one month from the date of the agreement. The first defendant had been residing at Thiru Veedhi Amman Koil Street, Porur, Madras 600 116 at the time of the execution of the agreement. However, when this defendant subsequently went to the above address for obtaining the title deeds of the Schedule property, it was discovered that the first defendant had vacated the premises and was absconding. Since the first defendant had committed breach and was absconding, this defendant caused a Police complaint to be lodged. Subsequently this defendant came to know about the agreement entered into between the first defendant and the plaintiff. Thereafter, the defendant instituted a suit numbered as O.S.No.4990/90 which is pending in the City Civil Court at Madras. In the said suit this defendant had preferred the I.A.No.10533 of 1990 seeking interim injunction restraining the first defendant herein from changing or encumbering the plaint property. The injunction application had also been allowed by the City Civil Judge. Since this defendant was not a party to the transaction between the first defendant and the plaintiff therefore the defendant is not aware of the averments made by the plaintiff.

10.2. The plaintiff has no legal right or authority to collect the rents from the tenants of the suit property since the same is violative of the earlier agreement between this defendant and the first defendant.

10.3. The allegations in the plaint discloses separate and different cause of actions while the suit as originally filed is as if the plaintiff was in possession of the suit property and for specific performance to execute a sale deed. Hence, if the plaintiff is out of possession of the suit property, he has to seek relief by paying the requisite court fee on the value of the property as on date of filing the fresh suit and he cannot circumvent by way of an amendment and avoid payment of the court fee.

10.4. The suit is neither maintainable in law or on facts and is liable to be dismissed in limine.

10.5. Hence, the suit in O.S.230/90 is neither maintainable in law or on facts and is liable to be dismissed in limine. Whereas the plaintiffs in O.S.682/92 are entitled to the relief sought for as the defendant viz., G.Sankaralingam violated the terms of the agreement.

10.6. Since the issue involved in all the suits are common, they are tried together and common judgment rendered.

10.7. Thiru Y.Suriya Rao, who is the plaintiff in O.S.No.230/90 and O.S.No. 74/93 and second defendant in O.S.682/92 examined as P.W.1. Messrs.Govindaraja Pillai, Ramnad, V.S.Maniam and Subramanian were examined as P.W.2 to P.W.5. Ex.A.1 to Ex.A.3 were marked on the side of the plaintiffs to prove his case in all the suits. Mr.G.Sankaralingam is

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the defendant in all the suits examined as D.W.1 M/s.Rajendran, Narayan, Gunasundari and Gopalan were examined on the side of the defendants as D.W.2 to D.W.5 to prove their respective claims in all the suits. The first plaintiff in O.S.682/92 was examined as D.W.2 to prove his claim. EX.B.1 to Ex.B.38 were marked on the side of the defendants to sustain their respective claim.

11. The lower court after analysing the evidence in depth found that the plaintiffs entitled to suit claim and accordingly decreed the suits.

12. Heard Thiru. V. Bhiman, the learned counsel for the appellant,Thiru.T.R.Rajaraman, the learned counsel for the 1st respondent and Thiru.A.K.Lakshmi Narayanan, the learned counsel for the 3rd respondent.

13. Upon hearing the rival claims, the points for determination are:-

(1) Whether there was any intention on the part of the owner to sell the entire property described in the Schedule in O.S.230/90 and O.S.682/92 to the agreement holder?

(2) Whether the plaintiff in O.S.230/90 obtaining an ad- interim injunction against the owner in respect of the suit property from intervening from his position?

(3) Whether the plaintiff in O.S.230/90 was dispossessed of the suit property, during the pendancy of the suit in otherwise than, by due process of law by the defendant?

(4) Whether the plaintiff in O.S.230/90 is entitled to suit claim?

(5) Whether the plaintiff in O.S.682/90 is entitled to suit claim?

(6) Whether the plaintiff in O.S.No.74/03 is entitled to repossess the suit property from the defendant, as the possession was taken by the defendant without any authority, during the pendancy of the suit coupled with ad interim injunction against him?

(7) Whether the finding of the lower court in O.S.No.230/90 is in order?

(8) Whether the finding of the lower court in 682/90 is in order?

(9) Whether the finding of the lower court in O.s.74/93 is in order?

14. Point No.1:-

It is true that the suit property is absolutely owned and dispossessed by Thiru.G.Sankaralingam who is the first defendant in O.S.230/90 and O.S.682/92 and the defendant in O.S.74/93. It is admitted by the defendant that he agreed to sell the entire suit property to the

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plaintiff in O.S.682/92 for Rs.3,25,000/-(Rupees three lakhs and twenty five thousand only). The said sale agreement entered into between them on 13.7.1988. The said sale agreement was marked as Ex.B.19. The genuineness of the document was not denied by the defendant. Similarly in respect of the very same property, the first defendant entered into agreement of sale with the plaintiff in O.S.No.230/90 on 22.2.89 for Rs.3,50,000/-. The description of the property referred in suit in O.S.230/90 and 682/92 are one and the same. Both the plaintiff in O.S.230/90 and 682/92 contended that the sale consideration was only Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) and 3,25,000/- (Rupees three lakhs and twenty five thousand only) respectively in respect of disputed property, whereas the defendant contended that the sale agreement in respect of the suit property is for Rs.5,25,000/- (Rupees five lakhs and twenty thousand only) and not as stated by the plaintiff in both the suits. Now let me look into the evidence of the defendant who is examined as D.W.1 to find out whether there is any truth in his contention.

" . . .ஏ.1 அக்ரிமெண்டில் காசி விஸ்வநாத சொசைட்டி மாம்பலம், அதில் உள்ள அடமானக் கடனில் வாதி சூரியராவ் பைசல் செய்துவிட்டு பத்திரங்களை மீட்டுக் கொள்ள வேண்டியது என்று சொன்னால் சரிதான். நான் மேற்படி சொசைட்டியில் அடமானம் வைத்தது நான் கிரையம் வாங்கிய 9 சென்ட் தான், வாதியுடன் நான் கிரைய ஒப்பந்தம் செய்துக் கொண்டது மேற்படி 9 சென்ட்டில் உள்ள 5 ம் நெம்பர் வீடும், அதில் உள்ள மனையும் தான், மேற்படி ஒப்பந்தப் பத்திரத்தில் சொசைட்டி கடனை செலுத்தி விட்டு கிரையப் பத்திரத்தை நீங்களே வாங்கிக் கொள்ளுங்கள் என்று வாசகம் எழுதப்பட்டதற்கு காரணம் சொசைட்டிக்கு கடனை அடைப்பதற்காகவே அவ்வாறு எழுதப்பட்டது. வாதி மொத்த சொத்தையும் நான் கிரையம் வாங்கிக் கொள்கிறேன் என்றுச் சொன்னதாலும், அப்போது பத்திரம் தேவை என்றுக் கருதியதால் தான் அப் பத்திரத்தை வாதியே வாங்கிக் கொள்ள வேண்டும் என்றுக் கூறியிருந்தேன். அடமானக் கடனை பைசல் செய்தப் பிறகு காசி விஸ்வநாத சொசைட்டியில் இருந்து பத்திரங்களை திரும்பப் பெற்று நான் தான் ஒப்படைத்தேன். ....

.....பி.19 யில் கதவிலக்கம் 5(1 முதல் 6) அதற்குரிய கிரையத் தொகை 3 லட்சத்து 25ஆயிரம் என்றுக் காட்டப்பட்டுள்ளது என்றுச் சொன்னால் சரி தான்.....

.....கிணறு பம்பு செட் உட்பட தான் வாதி கிரையம் கொடுக்க ஒப்புக் கொண்டேன். ஏ.1 ஒப்பந்தப் பத்திரத்தில் 5 ம் நெம்பர் வீட்டுக்கு மாத்திரம் என்று எல்லைகள் கொடுக்கவில்லை. நான் கொடுத்துள்ள நான்கு எல்லைகள் விவரம் 9 சென்டுக்குரியது. 5 ம் வீட்டுக்கு மாத்திரம் அளவுகள் ஏ.1 கொடுக்கவில்லை. 5 ம் நெம்பர் வீட்டுக்கு மாத்திரம் அக்ரிமெண்ட் எழுதும் காலத்தில் அளவுகள் தெரியவில்லை. .....

....இந்த 9 சென்ட்டில் இருக்கிற கட்டிடங்களுக்கு தமிழ்நாடு மின்சார வாரியம் மின் இணைப்பு ஒன்று தான். மின்சார சர்வீஸ் உட்பட தான் வாதிக்கு அக்ரிமெண்ட் போட்டேன். .....

.....16.6.89 யில் வாதியிடம் நான் ஒப்படைத்த மின் அட்டை ஏ.157 என்றுச் சொன்னால் சரிதான். இதில் 14 தெரு வீதி அம்மன் தெரு என்று போடப்பட்டுள்ளது என்றுச் சொன்னால் சரி தான். இந்த கதவிலக்கத்தில் சொல்லி தான் தாவா சொத்துக்கு மின் இணைப்பு பெற்றேன் என்று சொன்னால் சரி தான்.....

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...6.6.89 அன்று வாதி என்னிடம் கிரையத் தொகை என்னிடம் கொடுத்து விட்டார் என்றுச் சொன்னால் சரிதான். அன்றைய தேதியில் நான் 5 ம் நெம்பர் வீட்டில் மட்டும் தான் குடியிருந்தேன். .... அதை நான் காலி செய்து வைத்திருந்தேன். ,,,,5 ம் நெம்பர் கதவிலக்கத்தை நான் காலி செய்து விட்டு 5 ஏ நாராயணன் தெருவில் நான் குடியேறினேன் என்றுச் சொன்னால் சரிதான். ....

16.6.89 க்குப் பிறகு என் மனைவியும் நெம்பர் 5 ஏ நாராயணன் தெரு போரூரில் குடி இருந்தார்கள் என்றுச் சொன்னால் சரி தான். ....

.....5 ம் நெம்பரை தவிர்த்து மற்ற பகுதியில் வாதி அவருடைய வாடகைதாரர்கள் குடி வைத்தார் என்றுச் சொன்னால் சரி தான். ஜுன் 89 முதல் வாதி வாடகை ஏதும் கொடுக்கவில்லை என்றுச் சொன்னால் சரி தான். நான் அதிகாரம் கொடுத்தது கிடையாது. 16.6.89 பிறகு இருந்த வாடகைதாரர்கள் வாதியிடம் வாடகை வாதியிடம் தான் ஒப்படைத்தார்கள் என்றுச் சொன்னால் சரி தான். ...

....மொத்தம் 1 முதல் 6 கதவிலக்கம் கொண்ட மொத்த சொத்துக்கும் ஒரே மெயின் கேட் என்றுச் சொன்னால் சரி தான்.....

...ஏ1 ஒப்பந்தப் பத்திரத்தில் 1 லட்சத்து மூவாயிரத்து ஐநூறு நான் ரொக்கமாக பெற்றுக் கொண்டேன் என்று கண்டுள்ளது என்றால் சரிதான். ஏ1 ஒப்பந்தச் சமயத்தில் மாம்பலம் காசி விஸ்வநாத சொசைட்டியில் அடமானக் கடன் 48 ஆயிரத்து எழுநூறு இருந்தது என்றுச் சொன்னால் சரி தான். சா.அ.1 ஒப்பந்தம் செய்வதற்கு 1 வாரத்திற்கு முன்னால் எவ்வளவு கடன் என்று தெரிந்துக் கொண்டேன். சா.அ.1 ஒப்பந்தம் தேதிக்கு மறுநாள் காசி விஸ்வநாத அடமான சொசைட்டியில் அடமானக் கடன் தொகை வாதி செலுத்தினார் என்றுச் சொன்னால் சரி தான். சா.அ.3 மேற்குறிப்பின் படி நான் வாதியிடம் 23.2.89 யில் ரூபாய் 25 ஆயிரத்து எழுநூறு பெற்றுக் கொண்டேன் என்றுச் சொன்னால் சரிதான். 23.2.89 ல் 48 ஆயிரத்து நூறு தான் சொசைட்டிக்கு செலுத்த வேண்டிய கடன் என்றும் அதை தாங்கள் செலுத்தி விட்டதாகவும் மீதமுள்ள 600// ரொக்க பணமாக வாதி என்னிடம் செலுத்தினார் என்றுச் சொன்னால் சரி தான். அதை பெற்றுக் கொண்டு சா.அ.3 மேற்குறிப்பு செய்தேன் என்றுச் சொன்னால் சரிதான், 23.2.89 ல் வாதி செலுத்திய தொகை ரூ.1 லட்சத்து மூவாயிரத்து ஐநூறு மற்றும் 23.2.89 யில் சொசைட்டிக்கு செலுத்திய தொகை ரூ நாற்பத்து எட்டாயிரத்து நூறு என்றும் அன்றைய தினம் வாதி என்னிடம் ரொக்கமாக செலுத்திய தொகை 26 ஆயிரத்து ஐநூறு என்றும் சொன்னால் சரிதான். ஒவ்வொரு முறை வாதி என்னிடம் பணம் செலுத்தும் போதும் அதற்கு சா.அ.1 அக்ரிமெண்டிலேயே மேற்குறிப்பு செய்து மீதித் தொகை எவ்வளவு என்று குறிப்பிட்டு கொடுத்துள்ளேன். அவைகள் தான் சா.அ.4 முதல் 11 என்றுச் சொன்னால் சரி தான்.

29.4.90–க்குள் எனக்கும், கோபாலனுக்கும் கமிஷனர் அலுவலகத்தில் சமாதானம் ஆகி விட்டது, ஏன்றுச் சொன்னால் சரி தான். ....29.4.90 ல் நோட்டீசுக்கு நான் பதில் கொடுக்காததற்கு காரணம் 2 அக்ரிமெண்ட் கிடையாது. ஒரு அக்ரிமெண்ட் தான்.

...இந்த அக்ரிமெண்ட் போடுவதற்காக முன்னதாகவே வாதி ஸ்டாம்பு பேப்பர் வாங்கி வைத்திருந்தார் என்றுச் சொன்னால் சரி தான். ...

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...சா.அ.1 பத்திரத்தை படித்துப் பார்த்துத் தான் கையெழுத்து போட்டேன். அந்த சொத்து விவரத்தில் 5ம் நெம்பர் வீடும் அதைச் சார்ந்த இடமும் என்று சொன்னேன். அவ்வாறு சா.அ.1 எழுதி முடித்தப் பிறகு அவர் பெருக்கல் குறியிட்ட இடத்தில் தான் நான் கையெழுத்துப் போட்டேன்.....

...இந்த சா.அ.1 பத்திரத்தில் சொல்லப்பட்டு நான்கு எல்லைகள் விவரம் சரி தான். ...

...ஜூன் 90 வரை நான் 5ஏ நாராயண தெருவில், போரூரில் குடியிருந்தேன் என்றுச் கொன்னால் சாதான். எனவே ஜிசங்கரலிங்கம் 5 ஏ, நாராயணன் தெரு போரூர் என்ற முகவரிக்கு கடிதம் எழுதினால் அந்த முகவரிக்கு வந்துச் சேரும் என்றுச் சொன்னால் சரிதான். ....

.....வாதியிடம் 5 ம் நெம்பர் வீட்டை ஒப்படைக்கும் போது தெருவீதி அம்மன் கோவில் தெருவில் உள்ள மெயின் கேட்டு நல்ல முறையில் தான் இருந்தது. .....

....1 முதல் 4 பகுதிகளுக்கு வாதி சப் மீட்டர் போட்டது உண்மைதான்...

...5ம் நெம்பர் வீட்டைப் பொறுத்து மட்டும் தான் தடை உத்தரவு அமுலில் இருந்தது. எனக்கு இந்தக் கோர்ட்டில் இருந்து தடையுத்தரவு நோட்டீஸ் வந்தது. அந்த தடையுத்தரவில் 9 செண்ட்டுக்கும் தான் என்று வந்துள்ளது. இந்த கோர்ட்டின் 5 ம் நெம்பர் வீட்டுக்கும் மட்டும் அல்லது 9 சென்ட்க்கு என்று கிளாரிபிகெடின் வாங்கவில்லை. ...

.....11.1.91 அன்று வாதி துராகிரமமாக துன்புறுத்தியதற்கு வாதி கோர்ட்டில் மனு கொடுத்துள்ளார் என்றால் சரிதான்...

...11.1.91 வரை நெ.59, ராஜேஸ்வரி நகர் போரூரில் குடியிருந்தோம். அன்றைய தினம் வாதி வளசரவாக்கம் போலீஸ் நிலையத்தில் இரவு 7.00 மணிக்கு புகார் கொடுத்தார். அன்றைய தினம் போலிஸ்சார் நிலையத்தில் என்னை விசாரித்தனர். சிவில் கோர்ட்டில் வழக்கு நிலுவையில் உள்ளதால் வழக்கு முடித்து வரும்படி கூறினார்கள். ...

....16.6.89 க்குப் பிறகு வாதி புதிய வாடகைதாரர் வைத்தார் என்றுச் சொன்னால் சரிதான்.

கோர்ட்டு மூலமாகவோ வாதி வக்கீல் மூலமாகவோ சுவாதீனம் ஒப்படைக்க வேண்டும் என்று நான் கேட்கவில்லை.

10.8.93 அன்று வாதி அவரை துராக்கரமாக காலி செய்ததற்காக கன்டம்டம்ட் ஆப் பெட்டிஉடின் போட்டுள்ளார் என்றுச் சொன்னால் சரிதான் . . . "

15. On a perusal of the evidence of D.W.1, I am satisfied that the defendant agreed to sell the property under dispute in entirety for the amounts referred in the respective agreements. As per his evidence he has also received the entire amount referred in the agreement.

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16. The contention of the defendant is that though it was agreed to sell the property in dispute for Rs.5,25,000/- the agreement was prepared only for Rs.3,25,000/- with a view to facilitate the agreement holder to obtain loan from L.I.C., cannot be accepted in view of the fact that there is no rythm for such contention. Even as per the evidence the sale agreement was given effect to by putting the agreement holder in possession of the suit property. In fact, the plaintiff in O.S.No.230/90 occupied a portion of the suit property. Apart from that, the plaintiff in the said suit inducted tenancy in respect of other portions also. The plaintiff in that suit was collecting rents from the said tenants. Admittedly the plaintiff has not paid even a pie to the defendant after taking possession of the suit property in entirety in pursuance of the sale agreement. In such view of the fact, Section 53(a) of the Transfer of Property Act protects the right of the plaintiff.

17. Learned counsel for the appellant drew my attention with reference to certain interlineation in the agreement of sale and contended that the agreement of sale is not valid due to such contingency. The defendant in fact admitted that the agreement is with reference to the entire property in 9 (nine) cents of land. So much so he also admitted that as per the recital in the agreement, the sale agreement was only for Rs.3,50,000 (Rupees three lakhs and fifty thousand only). So, any kind of interlineation in the agreement of sale as suggested by the learned counsel for the appellant, even if it is true, will not affect the case of either parties to the proceedings as the interlineation is with reference to sale of the entire property which is their intention as per the admitted case of the defendant.

18. The sale agreement for Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) was with reference to the property in entirety which is the subject matter of the suit and the entire amount has also been paid by the plaintiff to the defendant as per the submission of the defendant as referred above. To get over to this in the written recital, defendant now states that the sale agreement was referred to Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) is only to enable the plaintiff to obtain loan from L.I.C cannot be accepted. There is nothing on record to show that such submission was only to facilitate the plaintiff to obtain loan from L.I.C. It is worthy to note that the defendant on his own saying agreed to sell the property in entirety which is the subject matter of the suit of the plaintiff in O.S.No.682/92. If that be so, even in case of any correction in the agreement of sale by the plaintiff will not affect the claim of the plaintiff. The Lower court has also rightly dealt this point in that line and accordingly answered this point while negativing the contentions of the defendant.

19. I do not find any infirmity or impropriety in the finding of the lower court in this regard. The findings of the lower Court is in order and does not require any interference. Hence, these issues are answered in favour of plaintiff.

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20. Point No.2:-

It is true that during the pendancy of the suit, the plaintiff obtained injunction in respect of the suit property in entirety. The defendant also admitted that the plaintiff obtained injunction in respect of the suit property. However, he has submitted that injunction was with reference to Door No.5 alone and not with regard to other items of the suit property. But from the plaint pleading of schedule property and the order passed thereon would show that the plaintiff obtained interim injunction against the defendant in respect of the suit property in entirety from interfering with his possession.

21. The defendant in his evidence admitted that he has not filed any memo clarifying to the effect that the injunction order against him was with reference to Door No.5 of the suit property only. From the evidence of the plaintiff and the defendant coupled with the injunction order of the court would show that the plaintiff obtained injunction against the defendant in respect of the suit property in entirety. Hence, I answer this point in favour of the plaintiff.

22.Point No.3:-

Admittedly, during the pendency of the suit the entire suit property was under the control of the plaintiff. In fact, the plaintiff was in physical possession of Door No.5 of the suit property. He was also collecting rents from the tenants. The plaintiff inducted tenants in respect of the suit property leaving Door No.5 and collecting rents therefrom. The plaintiff did not pay even a pie to the defendant as rent for the suit property. As on 6.6.1989, the plaintiff paid the entire sale consideration for the suit property. He has taken physical possession of Door No.5 of the suit property. More so, he inducted tenants in respect of other items of the properties and collecting rent. There is no dispute regarding this aspect. The sale agreement dated 23.2.1989 was registered on 12.5.1989. The plaintiff was inducted into possession in pursuance of the agreement of sale. The rights of the plaintiff with regard to the possession of the property is protected under section 53(a) of T.P. Act.

23. Considering the possession of the suit property in entirety in pursuance of the agreement of sale date 23.2.1989, the court below granted injunction against the defendant from interfering with the physical possession and enjoyment of the same by the plaintiff. This fact was also admitted by the defendant.

24. The counsel for the appellant/defendant would contend that on 9.8.1993 at about 9.00 a.m, the plaintiff of his own accord came to him and expressed his desire to vacate the portion under his occupation. He further submitted that the plaintiff brought two vans as well as some coolies to load the house hold articles and loaded the same in the said

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vans with the help of his men and vacated the premises in Door No.5 of the suit property and handed over vacant possession to the defendant. He further submitted that the plaintiff issued a receipt for having handed over the vacant possession to him. The learned counsel for the plaintiff/respondent confronted the contention of the learned counsel for the appellant/defendant and submitted that the plaintiff was dispossessed from the suit property highhandedly with the help of henchmen of the defendant. He also submitted that the said letter was obtained by the defendant under threat. He further submitted that he lodged a complaint against the defendant before police and the police had not taken any action as the Civil Suit was pending at that time. He further submitted that a Contempt petition was also filed in the said proceedings for taking necessary action against the defendant.

25. The rival contentions are considered in detail. The fact that the plaintiff was dispossessed on 9.8.1993 was proved while injunction order was in force against the defendant. It is also true that the defendant obtained possession of the suit property while injunction order pending against him on 9.8.1993. The only submission of the defendant that the plaintiff voluntarily surrendered the vacant possession at his own will. It is not the case of the defendant that by mutual agreement, the plaintiff handed over the vacant possession to the defendant. It is also not the case of the defendant that he repaid the sale consideration of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only) to the plaintiff and thereafter only he has taken possession of the same. It is true that immediately after dispossession, the plaintiff lodged a complaint against the defendant. Not stopped with that, he filed a Contempt Petition against the defendant in the said proceedings. The fact that the entire suit property was under the control of the plaintiff was not disputed. The plaintiff was dispossessed on 9.8.1993 was also not disputed. The fact that the defendant did not repay the sale consideration of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only, is also admitted. It is also true that as on 9.8.1993 the plaintiff has been contesting the suit for three years. It is also true that the suit agreement is dated 22.2.1989. If that be so, it is too much on the part of the defendant to say that without receiving the sale amount of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only), the plaintiff handed over the vacant possession to the defendant on his own accord. Till now, the defendant did not repay the sale amount of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only)to the plaintiff. However, the defendant would say that he filed a memo in the court to the effect that he has taken possession of the suit property as per the wish of the plaintiff. If such a memo is bonafide, the defendant ought to have deposited a sum of Rs.3,50,000/- (Rupees three lakhs and fifty thousand only)to the credit of the suit for onward payment to shown his bonafide. The defendant has also relied on the receipt alleged to have been executed by the plaintiff for taking possession of the suit property as per the desire of the plaintiff to sustain his claim. The plaintiff disputed the genuineness of the said receipt. He would say that the said receipt was obtained by force and threat against his Will.

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In view of the strained relationship between the plaintiff and the defendant, it is too much on the part of the defendant to say that the said receipt was issued by the plaintiff voluntarily without any threat or fear.

26. More so, if the plaintiff voluntarily surrendered possession , it is only for the defendant to hand over a receipt to the plaintiff stating that he had taken possession of the same in good condition. In this case, it is otherwise. This itself throws suspicion in the defence theory of taking delivery of the suit property at the will of the plaintiff.

27. The defendant examined one of the tenant to show that the delivery of the vacant portion of the property by the plaintiff was voluntarily. I have carefully scrutinized the evidence of the tenant examined on the side of the defendant. It is admitted that the plaintiff alone was collecting rent from the tenants. If that be so, the said witness ought to have admitted that he has been paying rent only to the plaintiff to show that he was a tenant in respect of the disputed property. He has not even whispered about the payment of rent made by him to the effect that he has been paying rent only to the plaintiff. So, his tenancy in respect of the disputed property itself is under suspicion. If the said witness admits the tenancy under the plaintiff and stated that the delivery of vacant portion of the property was only by the plaintiff to the defendant voluntarily then to the some extent we can trust his evidence. It is not so. So, the evidence of the tenant cannot be accepted in this context.

28. This defendant examined the van broker to prove that the plaintiff taken delivery of goods from the house voluntarily. The fact that the defendant taken delivery of the goods from the said house is not under dispute. So, this witness is of no use to the defendant. From the narration of events, I am satisfied that the plaintiff was dispossessed from the suit property during the pendency of the suit in otherwise that by due process of law by the defendant. In fact, the defendant dispossessed the plaintiff from the suit property with the help of his henchmen by force. The attitude of the defendant in dispossessing the plaintiff from the suit property during the pendency of the suit is hereby condemned. The Lower Court has also dealt this point in that line and rightly answered in favour of the plaintiff. There is no error or illegal in the findings of the Lower Court in this regard. I do not find any infirmity or impropriety in the finding of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any interference. Hence, this issue is answered in favour of plaintiff.

29. Point Nos. 4,6,7 and 9:-

In view of the findings rendered at Point Nos. 1 to 3, these issues are answered in favour of the plaintiff.

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30. Point Nos. 5 and 8:-

It is true that the plaintiff paid a sum of Rs.35,000/- (Rupees thirty five thousand only) to the defendant as advance amount for the agreement of sale dated 13.7.1988. The suit transaction has not materialised. In the mean time, the defendant entered into agreement of the sale in respect of the very same property with the plaintiff in O.S.No.230 of 1990. In such view of the fact, the plaintiff seeks for the return of the advance amount from the defendant. The sale agreement was not materialised due to the latches committed by the defendant. In such view of the fact, the plaintiff is entitled for the return of the advance amount in respect of the suit property. The Lower Court has also dealt this point in that line and rightly answered in favour of the plaintiff. There is no error or illegal in the findings of the Lower Court in this regard. I do not find any infirmity or impropriety in the findings of the Lower Court in this regard. The findings of the Lower Court is in order and does not require any interference. Hence, these issues are answered in favour of plaintiff.

31. In the result, all the appeals fail and accordingly dismissed. However, the parties have to bear their respective costs.

nvsri/mra

Sd/-
Assistant Registrar,

/ture copy/

Sub Assistant Registrar.

To
1.The Subordinate Judge, Poonamalle.
2.The Section officer, VR Section,
High Court, Madras.
+ One cc to Mr. T.R. Rajaraman, Advocate SR 9108
+ One cc to Mr. A. Subramaniya Iyer, Advocate SR 9205,9027,9026
+ 3 CCS to Mr. A.K. Lakshmi Narayanan, Advocate SR 9162,9161.
BV (co)
sg 2/3/07

Common Judgment
in
A.S.No.903 of 1997
A.S.No.540 of 2001
and
A.S.No.541 of 2001

Dated:13.02.2007

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